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ROSHKA HEYMAN & DEWULF, PLC
ATTORNEYS AT LAW
TWO ARIZONA CENTER
400 NORTH 5TH STREET
SUITE 1000
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

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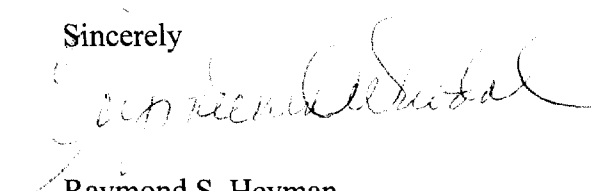
Secretary
Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20554

To whom it may concern:

Enclosed please find one original and five copies of Comments of the Arizona Payphone Association, Colorado Payphone Association, Minnesota Independent Payphone Association and Northwest Payphone Association to U S West, Inc.'s Proposed CEI Plan.

Please file the attached with the Commission and return to us a conformed copy. A self-addressed, stamped envelope is enclosed for your convenience.

Sincerely


Raymond S. Heyman

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Implementation of the Pay Telephone
Reclassification and Compensation Provisions of
the Telecommunications Act of 1996

RECEIVED
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Docket No. 96-128

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**COMMENTS OF THE ARIZONA PAYPHONE ASSOCIATION,
COLORADO PAYPHONE ASSOCIATION, MINNESOTA
INDEPENDENT PAYPHONE ASSOCIATION AND NORTHWEST
PAYPHONE ASSOCIATION TO U S WEST, INC.'S PROPOSED
CEI PLAN**

1. INTRODUCTION.

A. Identification of Associations.

The Arizona Payphone Association, the Colorado Payphone Association, the Minnesota Independent Payphone Association and the Northwest Payphone Association (sometimes collectively referred to herein as the "Associations") have joined to submit comments to U S WEST Inc.'s Comparably Efficient Interconnection Plan for Payphone Services filed with the Commission on January 6, 1997 (the "CEI Plan").

The Associations represent over 100 independent payphone providers ("IPPs")¹ doing business in the U S WEST service territories of Arizona, Colorado, Idaho, Minnesota, Montana, Oregon and Washington. Each is a non-profit association that has been formed to act as an advocate for the public payphone industry, provide education and training, and promote self-regulation among industry members. Members of each Association are customers of U S WEST who receive essential local access

¹ U S WEST has used the term IPP in its CEI Plan. For consistency the Associations use the term herein, although we note that the Commission has adopted the term payphone service provider ("PSPs") to refer to all payphone providers.

1 service through the U S WEST InterConnect Services Group. U S WEST, at the same time, competes
2 with these customers through the U S WEST Public Services Group, which owns and operates over
3 100,000 payphones.

4 As a consequence of the double-edged relationship that U S WEST has maintained with
5 IPPs, the Associations and their members have encountered repeated, and often well documented,
6 problems with U S WEST. Many of the problems resulted from U S WEST using its role as local
7 exchange carrier to implement policies and practices designed to benefit it as a payphone service
8 provider and to impede the operations and growth of its competitors. At times these problems were
9 solved only after the Associations or their members initiated (or intervened in) legal and regulatory
10 proceedings related to issues such as unfair business practices, cross-subsidization, discrimination and
11 interference with contractual relations. Still other problems persist today unresolved.

12 B. U S WEST's History of Anti-Competitive Abuses of IPPs.

13 U S WEST baldly asserts in its CEI Plan that it is already providing nondiscriminatory
14 access to network features and functions, apparently to justify U S WEST's incredibly vague plan. U S
15 WEST's assertion is belied by recent actions against U S WEST in Washington and Oregon. For
16 example, in a complaint proceeding brought by the Northwest Payphone Association against U S WEST
17 before the Washington Utilities and Transportation Commission ("WUTC"), the WUTC found less than
18 two years ago that U S WEST had imposed an anticompetitive price squeeze against IPPs:

19 The Commission believes the complainants have substantiated
20 their allegation that they are subject to a price squeeze in the public
21 payphone market.

22 Order Granting Complaint in Part, Northwest Payphone Association, et al, v. U S WEST
23 Communications, Inc., at 14, Docket No. UT-920174 (WUTC, March 17, 1995)(copy attached as
24 Appendix A). Additionally, the Washington commission found that U S WEST discriminated in the
25 provision of services to IPPs:

26 A principal concern of the Commission is whether U S
27 WEST provides CPPs [Competitive Payphone Providers] with
services and features equal in quality to those used by U S WEST

1 in its own payphone operations. "Coin line" service is a primary
2 example. [Footnote omitted]. By not providing coin line service,
3 a service U S WEST provides itself, U S WEST forces the CPPs to
4 incur additional capital investment.

5 Id. at 17-18.

6 The Washington commission also noted how U S WEST had priced line side answer
7 supervision (AS-LS) at such a level that it was uneconomic for IPPs to use the service, even though it is
8 a superior method of answer detection and fraud prevention:

9 There are significant problems with U S WEST's claim that there
10 is no real demand for Coin Line service and AS-LS. ...The
11 company's willingness to offer these services forces CPPs to invest
12 in more expensive "smart" payphones. Therefore, demand now
13 may be limited due to the investment in smart phones already
14 incurred by competitive payphone providers.

15 Second, U S WEST's own studies show there is in fact
16 some level of interest in these services at a reasonable price.
17 [Footnote omitted.] However, with AS-LS, for example, U S
18 WEST elected to price the service at a rate that severely restricted
19 demand.

20 Id. at 18-19.

21 In addition to the WUTC complaint proceeding, which has concluded, there is a pending
22 antitrust action brought by 11 IPPs in the United States District Court for the Western District of
23 Washington at Seattle. A copy of the complaint in that case is attached as Appendix B. The plaintiffs in
24 that case allege that U S WEST continues to discriminate against competitive payphone providers in the
25 public payphone market in the states of Washington and Oregon in violation of state and federal antitrust
26 laws. The complaint seeks both money damages and injunctive relief to prevent future discrimination.
27 This complaint has not yet been tried.

C. Given U S WEST's Anti-Competitive History the Commission Should Closely
Scrutinize the CEI Plan and Require a Strong, Detailed and Enforceable Plan.

The FCC should review U S WEST's CEI Plan against this backdrop. U S WEST has a
long history of committing anticompetitive action toward IPPs. At least 11 IPPs believe that U S

1 WEST is continuing to discriminate against them in violation of antitrust laws. Under the
2 circumstances, U S WEST's CEI Plan should be as strong and specific as possible.

3 Unfortunately, the CEI Plan is so vague that it is impossible for IPPs, or anyone, to audit or
4 measure compliance with the plan. A plan that cannot be audited or measured obviously cannot be
5 enforced. U S WEST's CEI "plan," if it can be called that, does nothing to ensure that IPPs will not be
6 subject to the kind of anticompetitive abuses found by the Washington commission and alleged in the
7 pending antitrust case.

8 **2. U S WEST'S FILING IS VAGUE AND VOID OF SUBSTANCE.**

9 With this background, the Associations were optimistic that the provisions of the 1996
10 Telecommunications Act and the Report and Order as modified by the Reconsideration Order issued in
11 this docket² (especially the requirement that a CEI Plan be developed, filed with and approved by the
12 Commission) would force U S WEST to reform its policies and practices of "customer service" on the
13 one hand and the doctrines of "fair competition" on the other. It was with great disappointment and
14 grave reservations for the future that the Associations analyzed the skeletal CEI Plan that U S WEST
15 proposed. As explained herein, the CEI Plan is deficient in so many ways that the Commission would
16 be justified (and the public well served) by rejecting U S WEST's filing and ordering that a new plan be
17 filed that is detailed, thorough and addresses the specific concerns raised in these comments.

18 Apparently, U S WEST has misunderstood the Commission's requirement for filing a CEI Plan.
19 In general terms, the Commission required Bell Operating Companies, such as U S WEST, to file a plan
20 describing how they intend to comply with the CEI equal access requirements and nonstructural
21 safeguards for the provision of payphone services (sometimes referred to herein as the "CEI criteria").
22 Such a plan should be forward-looking, comprehensive and detailed. Rather than develop such a plan, U
23 S WEST has prepared a self-serving document that attempts to portray its current policies and practices

24
25 ² Implementation of the Pay Telephone Reclassification and Compensation Provisions of the
26 Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388
27 (September 20, 1996) and Order on Reconsideration, FCC 96-439 (November 8, 1996); hereinafter
referred to as the "FCC Payphone Orders".

1 as being in complete compliance with the requirements of the FCC Payphone Orders. For example, U S
2 WEST concludes its filing by stating:

3 U S WEST has demonstrated that its provision and use of basic
4 payphone service comply with all Commission-mandated CEI
5 requirements and serve the public interest. CEI Plan at 16.

6 In fact, the CEI Plan is so vague and has so little detail that it will be impossible to enforce the plan
7 or measure U S WEST's compliance with the Commissions requirements or the plan itself.
8 Accordingly, the Associations do not reach the same conclusion as U S WEST does and would urge the
9 Commission to reject the CEI Plan and order U S WEST to file a plan that can be understood, monitored
10 and enforced.

11 3. **U S WEST SHOULD BE DIRECTED, IN REFILING ITS CEI PLAN, TO**
12 **PROVIDE THAT IT WILL UNBUNDLE THE BASIC ACCESS LINE FROM THE**
13 **COIN SUPERVISION FEATURES, AS REQUIRED BY THE PAYPHONE**
14 **ORDERS.**

15 U S WEST appears to have misinterpreted the Commission's orders, as demonstrated by U S
16 WEST's "Smart PAL" (coin line) tariff filings. U S WEST has failed to unbundle the basic payphone
17 services (for example, coin supervision functions and screening) from the access line.

18 A. Background

19 The basic access line that U S WEST has provided to IPPs for a number of years under the
20 name "public access line" ("PAL"), is no different than any other switched access line, such as a
21 business line. It provides no features or functionalities that are unique to payphone service.³ The only
22 reason that IPPs using smart payphone sets have subscribed to PAL service, rather than business
23 exchange service, is that U S WEST's tariffs require payphones be connected only to a so-called PAL
24 line, typically at a substantially higher rate than basic business service.

25
26 ³ IPPs do require screening services, which separately offered both to IPPs and other business
27 customers, under separate tariffs, and at separate charges.

1 B. U S WEST Was Required to Minimally Unbundle its Payphone Services by Filing
2 Separate Tariffs For Payphone Services and the Access Line.

3 In its orders implementing Section 276 of the Act, the FCC required LECs, such as U S
4 WEST, to tariff coin supervision services, which are not generally offered by LECs and have not been
5 offered by U S WEST in the past. The purpose of this requirement was to enable IPPs to connect
6 “dumb” payphones to the network. U S WEST has filed state tariffs to implement this provision by
7 adding a new service called “Smart PAL,” which has generally been referred to by other LECs and IPPs
8 as a “coin line.” Contrary to the unbundling requirements of the FCC Payphone Orders, U S WEST has
9 filed its Smart Pal as a bundled service, improperly combining the access line with the coin supervision
10 features.

11 U S WEST’s bundled filing is inconsistent with the requirements of FCC payphone orders..
12 The Commission specifically required “LECs to file tariffs for the basic payphone services and
13 unbundled functionalities in the intrastate and interstate jurisdictions....” Order on Reconsideration,
14 ¶163 (emphasis added). By basic payphone services, the Commission evidently intended to refer to the
15 coin supervision function, referred to in the order as “central office coin services.” Id., ¶162. This is
16 made clear by subsequent language in the Commission’s reconsideration order modifying the
17 Commission’s original order by stating that:

18 LECs are not required to file tariffs for the basic payphone line for
19 smart and dumb payphones with the Commission. We will rely on
20 the states to ensure that the basic payphone line is tarified by the
21 LECs in accordance with the requirements of section 276.

22 Id., ¶163 (emphasis added). The Commission would not have had different filing requirements for the
23 “basic payphone line” (to be filed only with the states) and the “basic payphone services” (to be filed
24 with the FCC and the states), had the Commission intended the LECs to bundle the coin supervision
25 functions with the access line.

26 C. There is No Technical Barrier to U S WEST Filing Tariffs that Unbundle the
27 Access Line From the Coin Supervision Features.

 There is no technical reason for U S WEST to have bundled its new coin line service. The
lack of any technical barrier to unbundling the access line from the coin supervision functions is readily

1 demonstrated by reviewing the tariffs filed by other LECs. Using the state of Washington as an
2 example, 24 LECs have filed tariffs pursuant to the FCC's orders. Nearly all of the LECs have filed
3 tariffs that unbundle the basic access line from the coin supervision features. Most of these LECs are
4 very small rural companies, many with fewer than 10,000 access lines company-wide. Even these small
5 companies have had no apparent difficulty in separating the access line in their tariff from the coin
6 supervision features.

7 As an example, the tariff of the Asotin Telephone Company filed with the Washington
8 Utilities and Transportation Commission on January 14, 1997, is attached hereto as Appendix C. Asotin
9 applies the business one-party local rate to the pay station access line. In addition, companies who so
10 desire may also purchase the "coin supervision" service at the rate set forth in NECA's interstate tariff
11 FCC No. 5. Appendix C, WN U-31, first revised sheet 7, §C.

12 The only real difference between a coin line and a basic access line is that the central office
13 line card for a coin line is a special card that is capable of providing the coin supervision functions.
14 Therefore, it is easy to unbundle the line from the coin supervision features. The cost of the coin card is
15 somewhat higher than a standard line card. Therefore, LECs who have filed unbundled coin supervision
16 tariffs pursuant to the Commission's order have generally charged \$2.00 or more for the separate coin
17 supervision functionality.

18 D. U S WEST's Bundled Filing Disguises Continuing Rate Discrimination Against
19 IPPs.

20 The problem with U S WEST's filing of a bundled coin line is that it facilitates continuing
21 price discrimination against IPPs in access to essential bottleneck network elements. In at least one
22 state, Washington, the bundling disguises actual rate discrimination by U S WEST against IPPs. A copy
23 of U S WEST's Washington filing is attached hereto as Appendix D.

24 U S WEST has proposed in the state of Washington a Smart PAL monthly rate of \$25.
25 This compares to a "Basic PAL" rate (which incorporates the business exchange access line rate) of
26 \$26.20 in rate group 3, which is the largest rate group (by number of lines) and the rate group in which
27

1 most payphones are located.⁴ Thus, U S WEST is actually proposing to charge less for coin line service
2 than it charges most IPPs for their basic “dumb” PAL service, even though coin line service costs U S
3 WEST more to provide than basic exchange access line service.

4 When the cost of screening (\$2) and line side answer supervision (\$1) are added to the
5 basic PAL rate in Washington, IPPs who use smart phones and purchase “dumb” PAL service will be
6 paying more than \$4 per month more than U S WEST’s Public Services Group will be paying for the
7 similar coin service. Viewed another way, were U S WEST to unbundle the charge for coin supervision
8 at a rate of, say, \$2, U S WEST would in effect be charging its dumb phones \$23 for their access lines,⁵
9 while charging IPPs \$26.20 for an access line that is the functional and technical equivalent under the
10 so-called “basic PAL” tariff.

11 This kind of rate discrimination would be impossible if U S WEST’s CEI Plan required U
12 S WEST to offer the access line both to smart and dumb payphone users under the same tariff and then
13 allowed providers who use dumb payphones to purchase coin supervision as a separate service and rate
14 element. U S WEST should be directed, in filing its revised CEI Plan, to commit to filing state and
15 federal tariffs that unbundle the access line from the coin supervision functions.

16 **4. U S WEST’S CEI PLAN MENTIONS ITS “SMART” PAYPHONE, BUT FAILS TO**
17 **DETAIL THE NETWORK ELEMENTS THE PAYPHONE USES, MUCH LESS**
18 **EXPLAIN HOW THOSE ELEMENTS HAVE BEEN UNBUNDLED AND MADE**
AVAILABLE ON A NONDISCRIMINATORY BASIS TO IPPS.

19 U S WEST has recently introduced a smart payphone called the “Millennium” set developed by
20 Northern Telecom. In addition to providing some of the standard “smart” functions other IPPs have in
21 their sets, the Millennium set provides special buttons to access certain services provided by U S WEST
22 and a “smart card” card reader. The smart card is a version of a cash card that U S WEST issues,
23 apparently to be used exclusively in U S WEST’s Millennium payphones. A copy of a U S WEST

24 ⁴ See Appendix E, US WEST Tariff WN U-31, /section 5.2.4.B., 2nd revised sheet 47].

25 ⁵ Because IPPs have never been able to purchase coin line service, they have substantial embedded
26 investment in thousands of smart payphones. For their embedded plant, they have no need for coin
27 services. Indeed, because of the voltage requirements of the coin line (130 volts to collect the coin),
smart phones probably would not work on coin lines.

1 brochure describing the smart card is attached as Appendix F. The Millennium phone is linked to a
2 centralized platform ("Millennium Manager"), which the Associations believe provides call rating and
3 routing functions and fraud prevention.

4 The CEI Plan fails, in a number of respects, to explain either how the Millennium functions and
5 what network features it requires, much less how other IPPs have equal access to those functions on a
6 nondiscriminatory basis. First, the CEI Plan fails to explain how U S WEST provides transport.
7 Second, the plan fails to explain what switching, database, and other functions the centralized
8 Millennium platform provides and how IPPs will have equal access. Finally, the CEI Plan and tariffs
9 fail to address how IPPs will have equal access to the network services accessed by U S WEST's smart
10 card, comparable to what U S WEST provides to its Millennium phones.

11 **5. THE CEI PLAN FAILS TO ADDRESS HOW U S WEST WILL ALLOCATE**
12 **FACILITIES ON A NONDISCRIMINATORY BASIS.**

13 Again, as one example cited for illustrative purposes in the state of Washington, U S WEST has
14 filed a proposed PAL tariff that makes both basic PAL service and coin line service "subject to the
15 availability of existing central office facilities and special operator equipped locations..." Appendix O,
16 USWC Tariff WN U-31, first revised sheet 141, §5.5.7A. See also U S WEST Tariff §5.5.7B.1, 2nd
17 revised sheet on Appendix G. This tariff restriction points out another serious shortcoming of U S
18 WEST's CEI Plan.

19 Evidently, U S WEST contemplates that PAL service will be denied to IPPs because of a shortage
20 of facilities. There is no reference as to how U S WEST's Public Service Group will be treated when
21 there is a shortage of facilities. The plan should address what steps U S WEST will take to alleviate a
22 shortage of facilities, if that is the intended solution. Alternatively, the CEI Plan might describe an
23 allocation plan to equitably allocate scarce facilities among all IPPs and U S WEST's Public Services
24 Group. Certainly, in situations where a IPP is replacing an existing U S WEST payphone, U S WEST
25 should not be able to use the excuse of a shortage of facilities, since a mere change in provider does not
26 require the availability of any more facilities than were already being used by U S WEST.
27

1 U S WEST should be directed to modify its plan to specify how not only central office facilities,
2 but access lines and other services will be provided to IPPs and U S WEST on a nondiscriminatory
3 basis.

4 **6. THE CEI PLAN FAILS TO NOTE THE DIFFERENCE BETWEEN CUSTOM NET**
5 **OUTGOING SCREENING THAT IT PROVIDES TO IPPS AND THE SCREENING**
6 **FUNCTION BUNDLED INTO COIN LINE..**

7 IPP's have long experienced greater fraud problems than LECs because of the lack of adequate
8 screening for outbound calls. Although -- in response to regulatory prodding -- LECs have greatly
9 improved the screening made available to IPPs, there still is not complete parity, at least in U S WEST
10 territory. This is one of the reasons that IPPs have fought to obtain central office supervision functions.

11 The CEI Plan fails to address the remaining difference in the quality of screening provided to IPPs
12 on basic PAL lines and should, therefore, be rejected. The Associations understand that U S WEST's
13 "Customnet" outgoing screening provides a code "07" to operator service providers, as added digits to
14 the ANI stream. The 07 code is supposed to alert the operator that there are (or may be) billing
15 restrictions on the originating line. Because there are different levels of restrictions on lines equipped
16 with the 07 code screening, the operator is supposed to initiate an inquiry to the line identification
17 database ("LIDB") to determine whether the requested billing for the call is allowed. This requires an
18 extra step and, in practice, is not universally performed by all operator service companies on all calls.

19 In contrast, the Associations understand that the screening code generated by coin lines is a "27"
20 code, also added to the ANI stream. The 27 code is reserved exclusively for payphones. Thus, without
21 having to undertake any action, the operator can instantly see that the call is being placed from a
22 payphone and that no billing back to the originating number should be allowed.

23 U S WEST should be required to explain if and how its CEI Plan will provide true equality
24 between the screening provided to IPPs on basic PAL lines and the screening provided to U S WEST's
25 payphones on coin lines.⁶

26 ⁶ The Associations believe that U S WEST should be required to provide ANI Code 27 to all
27 payphones regardless of the classification of line to which the payphone is connected. This will

1 7. **U S WEST'S CEI PLAN FAILS TO DEMONSTRATE THAT IPPS WILL BE**
2 **PROVIDED WITH NONDISCRIMINATORY LINE QUALITY.**

3 Again, using U S WEST's Washington State tariff as an example, U S WEST has proposed a term
4 and condition that:

5 "PAL service is not represented as adapted for data service. PAL
6 service contemplates the provision of satisfactory voice
7 transmission only."

8 Appendix D, 4th Revised Sheet 144, Section 5.5.7.B.7. U S WEST itself provides data service from its
9 own payphones. Attached hereto as Appendix 4 is a photograph of a U S WEST Millennium phone
10 located at the Seattle-Tacoma International Airport. At the top of the phone, U S WEST has provided a
11 data port for end users to obtain data service access. Clearly, U S WEST intends to provide, and does
12 provide, data service from its own payphones.

13 The discriminatory nature of U S WEST's term and condition is apparent on its face. Again, this
14 discrepancy points out the inherent and serious deficiencies of U S WEST's proposed CEI Plan. It
15 contains no standard by which U S WEST's compliance may be measured. Line quality, in terms of
16 loss, noise, and other parameters, are easy to specify. U S WEST should be required to either specify
17 standards applicable to all payphone lines or to incorporate them by reference and explain how it will
18 ensure that U S WEST's own data port at the Sea-Tac Airport will not be receiving a higher quality of
19 service than a competitive IPP's payphone line.

20 8. **U S WEST'S CEI PLAN FAILS TO ADDRESS HOW U S WEST WILL PROVIDE**
21 **NONDISCRIMINATORY TREATMENT BETWEEN ITS PUBLIC SERVICES**
22 **GROUP AND IPPS WITH REGARD TO OPERATOR SERVICES AND**
23 **OPERATOR SERVICE COMMISSION PAYMENTS.**

24 U S WEST currently pays most payphone site providers a commission payment, based on a
25 percentage of the gross intraLATA revenues generated by the payphone at the site. The commission
26 percentage is calculated based on both sent-paid (coin) and nonsent-paid (operator-handled, including
27 ensure party of the quality of screening. This will also make it easier to identify payphone lines for
28 dial and compensation.

1 credit card) calls. U S WEST's CEI Plan fails to even make mention of these commission payments,
2 much less explain how its continued payment of these commissions will be done on a nondiscriminatory
3 basis.

4 Although U S WEST recently began offering some commissions to IPPs, the percentages have
5 been substantially lower than commissions that U S WEST offers to site owners. U S WEST's lack of
6 any apparent plan to ensure nondiscrimination is particularly troublesome, in that U S WEST also
7 proposes that its coin line service will automatically route all intraLATA calls to U S WEST and only U
8 S WEST. See, e.g., Appendix D, USWC Tariff WN U-31, §5.5.7 A.2.

9 Once again, U S WEST's own tariff filings illustrate that U S WEST's CEI Plan is so vague that it
10 not only does not ensure nondiscrimination, it actually permits U S WEST to engage in obvious
11 discrimination against IPPs. U S WEST's plan should be rejected for yet another reason.

12 **9. THE PLAN FAILS TO ADDRESS THE "WALK-AWAY FRAUD" PROBLEM ON**
13 **COIN LINES**

14 One problem on coin lines is that after the customer pays for the initial minute(s) of use
15 customer only has to pay for the rest of the call at the end of the call. This results in the potential for a
16 great deal of "walk-away fraud." This occurs where that customer completes the call and then leaves
17 without paying for the time beyond the initial minute(s). Nowhere in the plan has U S WEST dealt with
18 this issue. Either U S WEST has to reprogram its equipment to require advance, ongoing payments for
19 all toll usage or it must specify whether it will collect these unpaid toll charges from the IPPs and U S
20 WEST Public Services. U S WEST has to treat both the IPPs and U S WEST Public Services the same.

21 **10. WHEN USING A COIN LINE IPPS SHOULD BE ABLE TO PIC TO ANOTHER**
22 **INTRALATA CARRIER THAN U S WEST.**

23 The plan does not state whether IPPs will be allowed to PIC their pay telephones, that are
24 connected to a coin line, to another intraLATA carrier than U S WEST. If IPPs are required to PIC to U
25 S WEST then U S WEST has improperly bundled its operator services with its coin line service. U S
26 WEST should be required to unbundle these two services. At the most, U S WEST should be allowed to
27

1 require the coin line be PICed to an operator services provider that can provide the necessary
2 functionality.

3 **11. ACCESS TO OPERATIONAL SUPPORT SYSTEMS MUST BE THE SAME..**

4 In order to ensure that U S WEST Public Services and the IPPs are competing on a fair and level
5 playing field it is vitally important that the Commission assure that each of the parties have the same, not
6 "comparable access" (U S WEST CEI page 9) to U S WEST's operational support systems. If U S
7 WEST Public Services is allowed to continue to have access to U S WEST's operational support
8 systems (OSS) by electronic interface then IPPs must be granted the same direct access to USWEST's
9 computer system for placing their orders for service, scheduling maintenance and repair and receiving
10 billing information. If IPPs have to continue to place their orders or requests for service and information
11 by voice or fax through the U S WEST's Interconnect Services Group then U S WEST Public Services
12 should have to also place its orders in the same manner. To do otherwise would be to give U S WEST
13 Public Services a competitive advantage in the market place.

14 The problem with this section of U S WEST's Plan, just as with other sections of Plan, is that it is
15 so vague that it is not possible to tell what U S WEST has proposed. There is no information in the Plan
16 about how U S WEST proposes to allow its Public Services group access the U S WEST network side of
17 the OSS. Therefore, there is no way to determine from the CEI Plan whether the IPPs and U S WEST
18 Public Services will have "comparable access," or even what U S WEST means by comparable access.
19 The IPPs clearly don't consider themselves to have comparable access at the current time.

20 IPPs currently have to place their orders by voice or fax. If by voice, there are usually significant
21 period spent on hold waiting to place the order, request service or request information. If the
22 communication is by fax and there is a wait for the call back to confirm that service will be installed.
23 The hold time is due to U S WEST's failure to adequately staff the Interconnect Services group, rather
24 than problems with the U S WEST personnel. On the other hand U S WEST Public Services has direct
25 computer access to the U S WEST OSS, and therefore avoids many of the problems and delays
26 experienced by the IPPs.

1 If U S WEST is allowed to place its orders, requests for service or requests for information in a
2 different manner or to work with a different group at U S WEST it will be very easy for U S WEST to
3 favor its Public Services group over the IPPs. This could allow U S WEST to drive up the costs for
4 IPPs' to do business and to give U S WEST Public Services a cost advantage. The only way to assure
5 that U S WEST Public Services and the IPPs compete on a fair and level playing field is to require that
6 they have the same access to U S WEST's OSS. U S WEST Public Services must be treated as just
7 another IPP. The Commission should reject U S WEST's CEI Plan and order U S WEST to file a
8 detailed plan that will allow the Commission and the IPPs to determine exactly how U S WEST intends
9 to provide service to the IPPs and U S WEST Public Services.

10 **12. ACCESS TO INFORMATION MUST BE THE SAME.**

11 For there to be true competition in the payphone market place both sides, the IPPs and U S WEST
12 Public Services, must be allowed the same access to information available from the U S WEST network
13 side of the business. For example, both IPPs and U S WEST Public Services should have the same
14 access to customer information and the availability of facilities that is collected and maintained by U S
15 WEST in its network group. U S WEST Public Services should not be given an information advantage
16 that could become a competitive advantage. There is nothing in the plan that addresses that issue.

17 **13. THERE ARE A NUMBER OF PROBLEMS IN THE U S WEST ILLUSTRATIVE**
18 **TARIFF.**

19 There are a number of problems with the U S WEST illustrative tariff (Exhibit B to the CEI Plan).

20 1. U S WEST has failed to truly unbundle its services as detailed previously herein. U S
21 WEST has bundled in the central office coin control features with its central office access line. U S
22 WEST should be required to separately offer and price the access line and each of the individual central
23 office features. Then IPPs' and U S WEST Public Services will be able to order just the features that
24 they need. This will also force U S WEST to associate its costs and rates with the individual services
25 that are provided.

26 2. In paragraph 5.5.7 B.2 U S WEST proposes that Pal be the only service offered for
27 use with customer-owned pay telephones. This is contrary to the rulings in states such as Minnesota

1 which allow IPPs to connect their pay telephones to 1FB lines and to order the screening, blocking and
2 identification services separately from U S WEST. (MN Docket No. P-421/C-95-1036, Order dated
3 November 27, 1996). By setting up a separate class of service and bundling in extra features U S WEST
4 is able to artificially manipulate the price. U S WEST should be required to remove this paragraph and
5 then separately price the access line and the features. This would be true unbundling.

6 3. In paragraph 5.5.7 B.9, U S WEST states that it may require a number change for
7 converting from Basic to "Smart-PAL." U S WEST should be forced to justify this requirement as a
8 technical necessity. If it is required then it appears that the services being offered are not the same.

9 4. In paragraph 5.5.7.B.14a, U S WEST requires that separate lines be used for each
10 payphone. This is not necessary and is contrary to current practices. In such places as inmate facilities,
11 airports and truck stops it is common to use concentrators so there is more than one payphone per line.
12 This is an unnecessary restriction on how people do business. If this is a state restriction then the state
13 should handle it in a rule making proceeding, not in the U S WEST tariff.

14 5. In paragraphs 5.5.7.C.1.d., U S WEST states that a maintenance of service charge
15 will apply for visits by a company employee to a customer premises when the service difficulty or
16 trouble report results from the customer-owned pay telephone. The maintenance of service charge
17 should also apply when the company employee find that a trouble report or service difficulty results
18 from a U S WEST Public Services Group pay telephone.

19 6. In paragraph 5.5.7.C.1.c, it states that toll adjustments will not be allowed on the
20 PAL account, unless due to company error. Company error should be defined to include the failure to
21 provide screening and blocking services.

22 7. As a general proposition all references to customer-owned pay telephones should be
23 eliminated in the tariff. In the new environment there is no need to distinguish between the pay
24 telephones installed by an IPP and the pay telephones installed by U S WEST Public Services Group.
25 The reference in the tariff merely should be to pay telephone(s).

1 **14. THE COMMISSION MUST ASSURE THAT THE SERVICE OFFERED TO**
2 **SUBSCRIBERS TO COIN LINES AND TO PAL OR 1FB LINES ARE THE SAME.**

3 In this transition of time toward full competition in the pay telephone marketplace the
4 Commission must be especially careful to ensure that U S WEST does not give its Public Services
5 Group an advantage in the market place. The Commission must make sure that subscribers to coin lines
6 are receiving service on the same terms and conditions that is provided to subscribers of PAL lines.
7 Currently, almost all of U S WEST's pay telephones are connected to a coin line and almost all of the
8 IPP pay telephones are connected to a PAL line or a 1FB line (a PAL line is really just a 1FB line with
9 some screening and blocking features added to the line). It is unclear from the CEI Plan, but the plan
10 could be read to say that U S WEST will provide the same service on a non-discriminatory basis to an
11 IPP that subscribes to its coin line as it provides to its Public Services Group, but that someone who
12 subscribes to a PAL line will get service in a different manner. Because of the different equipment
13 currently in use by the IPPs and the U S WEST Public Services Group, this would not achieve the law's
14 or the Commission's goals of full, fair, effective and non-discriminatory competition. The Commission
15 must assure that the quality, level and type of service being offered to IPPs and U S WEST Public
16 Service Group is functionally and effectively the same.

17 **15. THE CEI PLAN FAILS TO INDICATE HOW U S WEST WILL MAINTAIN AND**
18 **REPAIR PAYPHONES IN THE FUTURE.**

19 The CEI Plan is mysteriously silent on essential questions pertaining to U S WEST's operations in
20 the future, especially as they relate to maintenance and repair of independently owned payphones. It is
21 important for the integrity of the Commission's continued regulation of U S WEST that there be stated in
22 the plan detailed and clear **commitments** from U S WEST as to the manner in which it will provide these
23 services to itself and other payphone service providers. The CEI Plan steers clear from any such
24 commitment.

25 For example, U S WEST currently services and repairs its own payphones and lines. However, with
26 respect to independently-owned payphones, it merely repairs and maintains the lines (sometimes referred
27 to as "up to the d-mark" or "NID"). If U S WEST determines that a problem at a payphone location is not
line-related, it will (under the best case scenario) only notify the payphone owner that the problem is not

1 with the line. The payphone owner must then make separate arrangements to have the problem fixed.
2 This two-step process can be time consuming and costly for the IPP. Under the CEI criteria, U S WEST
3 should standardize the duties of repair and maintenance personnel for U S WEST and independent
4 payphones. Included in this standardization should be duties, responsibilities, procedures and charges.
5 The CEI Plan does not address any of these issues. Indeed, U S WEST has given no indication as to
6 whether it will keep the two-step process and thereby employ two separate repair crews (one for lines and
7 the other for hardware) or if it will integrate the repair function for all payphone service providers. Nor
8 does the CEI Plan discuss whether repair crews will be contained within the U S WEST Public Services
9 Group, the U S WEST InterConnect Services Group or an independent group not yet created.

10 Another maintenance-related area that needs to be reformed in light of the CEI criteria is U S
11 WEST's policy for scheduling repairs. In practice, U S WEST treats its own payphones and independents
12 differently. This is highlighted by its treatment of weekend repair calls. Currently, U S WEST claims
13 that if it receives a repair call for one of U S WEST Public Services Group's phones during a weekend it
14 will only send a technician to determine if it is a line related problem. If the problem is line-related then
15 it will fix the line at that time. U S WEST further claims that if the problem is hardware related it will
16 mark the phone and send out another technician on the following Monday to fix the phone. However, if
17 U S WEST receives a repair call during the weekend for an IPP, then the earliest it will send out a
18 technician for any reason is the next Monday. This is after the IPP has clearly determined the problem is
19 in the line. There is no legitimate reason for the inferior repair service that U S WEST provides to IPPs
20 and this practice must be repudiated in the CEI Plan.

21 U S WEST has also failed to address key other items related to maintenance and repair service, such
22 as the cost that U S WEST and IPPs will pay for such services in the future, standardizing maintenance
23 schedules and criteria for the different technologies employed by U S WEST and "smart" payphones, and
24 authority and access to hardware owned by IPPs. Without all of these matters being discussed and
25 properly accounted for by U S WEST, its CEI Plan is wholly inadequate.
26
27

1 **16. THE CEI PLAN FAILS TO OUTLINE THE FUTURE RELATIONSHIP BETWEEN**
2 **THE U S WEST'S PUBLIC SERVICES GROUP AND THE INTERCONNECT**
3 **SERVICES GROUP.**

4 The CEI Plan fails to address the nature of the relationship between U S WEST's Public Services
5 Group and Interconnect Services Group in the future. Instead, U S WEST merely indicates that both
6 groups will continue to function, presumably as they do today. In reality, if these groups are to do so (in
7 the future and) in compliance with CEI criteria, they will have to deal with each other and the other areas
8 of the company in a completely arms length manner, the same as IPPs do. Currently, U S WEST's Public
9 Services Group and InterConnect Services Group interact with each other and the other parts of U S
10 WEST in a world that requires no formalities such as written contracts for goods or services. U S WEST
11 should commit to the Commission that it is willing, in the future, to operate in an arm's length fashion
12 and that its agreements for unbundled services and goods will be documented in written agreements such
13 that the nature of its operations and dealings can be verified. Additionally, U S WEST should commit in
14 the CEI Plan that IPPs will have access to the same goods and services at the same terms and conditions
15 as these groups. By way of illustration, the CEI Plan should provide that the U S WEST Public Services
16 Group will enter into written agreements with U S WEST for services such as operator services, billing
17 and collection, calling card availability, coin collection and, as discussed previously herein, payphone
18 maintenance. U S WEST should further commit in the CEI Plan that IPPs will have the same right to
19 enter into these types of agreements with U S WEST, upon the same or similar terms and conditions as U
20 S WEST's Public Services Group.

21 **17. THE CEI PLAN DOES NOT REMEDY THE PROBLEMS CREATED BY U S**
22 **WEST'S CONTRACTING WITH PAYPHONE "AGENTS".**

23 In the past several years, U S WEST has implemented a scheme whereby it has attempted to
24 withhold information from IPPs (and even location owners) such as revenue history and commission
25 payouts, contract terms and conditions, and site locations by employing payphone "agents". U S WEST
26 has implemented distinct and discriminatory policies regarding letters of agency and other information
27 requests for payphones that are (a) owned by IPPs; (b) owned by U S WEST without a payphone agent;
 or (c) under contract to a payphone agent. For example, U S WEST will provide revenue data for a
 location that has a payphone it owns that is not under contract with a payphone agent, but will not do so if

1 a payphone agent is involved. There is no reason for these different responses other than to impede
2 competition with IPPs. The CEI Plan must, but does not, address how U S WEST will standardize its
3 policies and practices regarding letters of agency for all payphones.

4 **18. THE CEI PLAN DOES NOT COMMIT THAT U S WEST SUBSIDIES WILL**
5 **CEASE OR BE MADE AVAILABLE TO ALL PAYPHONE PROVIDERS.**

6 U S WEST Direct is an affiliate of U S WEST that provides phone books to payphone locations. In
7 some, if not all jurisdictions, U S WEST Direct pays a fee to U S WEST for the "right" to place
8 phonebooks at payphone locations. Remarkably, U S WEST Direct does not offer such a fee to the
9 location owners or IPPs.⁷ There is no justification for U S WEST Direct to offer this type of a payment
10 only to U S WEST payphones and not location owners or IPPs. In order to comply with CEI criteria, U S
11 WEST Direct should be required to either offer the fee to all payphone providers or U S WEST should be
12 prohibited from accepting such a fee unless it is offered to all other payphone provide either one or the
13 other.

14 **CONCLUSION**

15 The Associations believe and have in these comments demonstrated that U S WEST's CEI Plan
16 should be rejected because it is so vague and ambiguous it simply does not qualify as a plan under the
17 CEI criteria.

18 Respectfully submitted this 6th day of February, 1997.

19 ROSHKA HEYMAN & DEWULF, PLC

20 By 

21 Raymond S. Heyman
22 Two Arizona Center
23 400 North 5th Street, Suite 1000
24 Phoenix, Arizona 85004
25 (602) 256-6100
26 Attorney for Arizona Payphone Association

27 ⁷ The associations believe that over the years the fees have totaled millions of dollars.

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MILLER, NASH, WIENER, HAGER & CARLSEN LLP

By Brooks E. Harlow

Brooks E. Harlow
4400 Two Union Square
601 Union Street
Seattle, Washington 98101-2352
(206) 622-8484
Attorneys for Northwest Payphone Association

WALTERS & JOYCE, P.C.

By Craig Joyce

Craig Joyce, Esq.
2015 York Street
Denver, Colorado 80205
(303) 322-1404
Attorneys for the Colorado Payphone Association

LUDVIGSEN LAW OFFICES

By Gregory A. Ludvigsen

Gregory A. Ludvigsen
3801 E. Florida Avenue
Suite 400
Denver, Colorado 80210
(303) 759-1621
Attorneys for Minnesota Independent Payphone
Association

CERTIFICATE OF SERVICE

The original and five (5) copies of the foregoing document were Federal Expressed to The Federal Communications Commission on this 6th day of February, 1997 and service upon the parties was completed by mailing a copy of the foregoing document on this 6th day of February, 1997 to the following:

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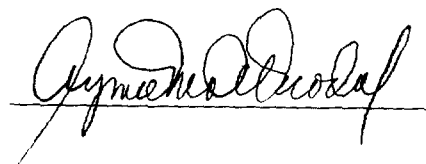
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Washington, D.C. 20037

Gregory Ludvigsen, Esq.
Ludvigsen Law Office
3801 E. Florida Avenue
Suite 400
Denver, CO 80210

Craig Joyce, Esq.
Walters & Joyce, P.C.
2015 York Street
Denver, CO 80205

Brooks E. Harlow, Esq.
Miller, Nash, Wiener, Hager & Carlsen
4400 Two Union Square
601 Union Street
Seattle, WA 98101



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SERVICE DATE

MAR 17 1995

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NORTHWEST PAYPHONE ASSOCIATION, A)
WASHINGTON NON-PROFIT CORPORATION,)
DIGITAL ACCESS COMMUNICATIONS CORP.,)
NCS TELEWORK COMMUNICATIONS CO.,)
PAYTEL NORTHWEST, INC., and PUBLIC)
COMMUNICATIONS OF AMERICA,) DOCKET NO. UT-920174
Complainants,)
v.) ORDER GRANTING COMPLAINT
U S WEST COMMUNICATIONS, INC.,) IN PART
Respondent.)
.)

SUMMARY

PROCEEDINGS: On February 7, 1992, the Northwest Payphone Association (NWPPA or complainants) and four of its members, Digital Access Communications Corp., NCS Telework Communications Co., Paytel Northwest, Inc., and Public Communications of America,¹ filed with the Commission a complaint against U S WEST Communications, Inc. (U S WEST or company), alleging that the rates, charges, rules, regulations, and practices of U S WEST regarding the payphone services of non-local exchange company (LEC) providers are unreasonable, discriminatory, illegal, and unfair. The complaint alleged that the competitive public payphone industry has been hindered by the anti-competitive abuses of U S WEST. In its answer, U S WEST denied the allegations and argued that competitive payphone providers (CPPs) must register with the Washington Utilities and Transportation Commission as telecommunications companies.

HEARINGS: The Commission held twelve days of hearings in this proceeding. Hearings were held in Olympia before Chairman Sharon L. Nelson, Commissioners Richard D. Casad, A.J. Pardini, and Richard Hemstad, who also reviewed all of the testimony and exhibits, and Administrative Law Judge Heather Ballash of the Office of Administrative Hearings.

¹ After the complaint was filed, NCS Telework Communications Co. and Paytel Northwest, Inc., merged into the surviving entity Paytel Northwest, Inc.

APPEARANCES: The Northwest Payphone Association and the four other complainants were represented by Brooks Harlow and Clyde MacIver, attorneys, Seattle. The Staff of the Washington Utilities and Transportation Commission (Commission Staff) was represented by Sally G. Johnston, assistant attorney general, Olympia. U S WEST Communications, Inc., was represented by Edward T. Shaw, Steve Holmes, and Molly Hastings, attorneys, Seattle.

COMMISSION: The Commission orders U S WEST to reduce its public access line rate to the equivalent simple business line rate and to eliminate usage charges. The Commission also orders U S WEST to reduce its answer supervision-line side monthly recurring rate from \$3.95 to \$1.00. Based upon the Commission's imputation analysis, these two reductions eliminate the price squeeze created by the price charged to competitors for essential monopoly or "bottleneck" inputs and the \$0.25 per call charged to end-users for a local call. Additionally, the Commission orders U S WEST to respond in writing to competitive payphone providers' requests for network services within 120 days of a request. U S WEST shall implement the request by offering the service under tariff if the service is feasible based upon currently available technology and if forecasted demand is sufficient to allow U S WEST to recover its costs. U S WEST shall implement the request as soon as practicable and no later than 6 months following the receipt of the customer's request.

SCOPE OF PROCEEDINGS

I. Procedural History

A pre-hearing conference in this complaint proceeding was convened on June 2, 1992; the parties agreed to reconvene for another pre-hearing conference at a later date.¹ On September 16, 1992, prior to the reconvening of the pre-hearing conference, oral argument on a motion to compel discovery was held. On October 16, 1992, the pre-hearing conference was reconvened.

The pre-filed testimony and exhibits of the NWPPA were cross-examined on February 1 and 2, 1993. On February 2, 1993, at the conclusion of the cross-examination of the complainant's direct case, U S WEST made an oral motion to dismiss the NWPPA's complaint for lack of jurisdiction. After briefs were filed and oral argument heard, the Commission denied the company's motion on February 10, 1993.

¹ The continued pre-hearing conference was set October 5, 1992, but due to the Commission's schedule was moved to a later date.